In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 205

J. W. FREE, *Petitioner*

v.

JAMES F. BLAND, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Pursuant to Rule 42(4) of the Rules of this Court, the Solicitor General, on behalf of the United States, files this memorandum as *amicus curiae* and urges that the petition for a writ of certiorari in this case be granted.

Petitioner brought the present action after the death of his wife to determine the ownership of certain series "E" and "F" United States savings bonds purchased with community property during the life of his wife and registered in the co-ownership ("or") form in his and his wife's name. Although Treasury Regulations

provide that "No judicial determination will be recognized which * * * would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner" 31 C.F.R. § 315.20, the Supreme Court of Texas considered state law controlling and ordered judgment for the executor of the wife's estate in the amount of one-half the value of the bonds at the same time placing a lien on the bonds to secure payment.

The United States believes, for three reasons, that the petition for certiorari should be granted.

First, the decision of the Supreme Court of Texas is in conflict with the decisions of the highest courts of a substantial number of states on the question of the applicability of state or federal law, and the matter can be resolved only by this Court. See Petition, pp. 7-9. Furthermore, the decision below conflicts in principle with *Wissner* v. *Wissner*, 338 U.S. 655, which held that a widow could not claim one-half of the proceeds of a National Service Life Insurance policy on the basis of California community property law since she had not been named as a beneficiary pursuant to the applicable federal statute (38 U.S.C. (1952 ed.) 802(g), now 38 U.S.C. 716).

Second, the question presented is of substantial importance to the multitude of private holders of United States Bonds, as well as to the United States government in the exercise of its borrowing power. There are presently outstanding over $40 billion worth of savings bonds in a form providing a right of survivorship such as that involved in the present case—*i.e.*, in either the "coowner" or "beneficiary" form of registration, 31 C.F.R. § 315.7

(a)(2) or (3). It is reasonable to assume that a large proportion of these bonds were purchased specifically to obtain the survivorship benefits which the Treasury Department has stated were created by these forms of registration.

Third, the decision of the Supreme Court of Texas erroneously denies effect to duly authorized Treasury Department Regulations and improperly disregards the position with regard to the survivorship provisions to which the Treasury Department has adhered for the past twenty-five years.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

WILLIAM H. ORRICK, JR.,
Assistant Attorney General.

AUGUST 1961.

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